

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Application of Ohio Edison:
Company, The Cleveland :
Electric Illuminating :
Company, and The Toledo :
Edison Company for : Case No. 23-301-EL-SSO
Authority to Establish a :
Standard Service Offer :
Pursuant to R.C. 4928.143 :
in the Form of an Electric:
Security Plan. :

- - -

PROCEEDINGS

before Mr. Gregory Price, Ms. Megan Addison, and
Ms. Jacky Werman St. John, Attorney Examiners, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-A, Columbus, Ohio, called at 10:02
a.m. on Monday, November 27, 2023.

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VOLUME VIII

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1601

Monday Morning Session,
November 27, 2023.

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EXAMINER ADDISON: Let's go ahead and go
on the record.

Good morning, everyone. The Public
Utilities Commission has set for hearing at this time
and place Case No. 23-301-EL-SSO, being in the Matter
of the Application of Ohio Edison Company, The
Cleveland Electric Illuminating Company, and The
Toledo Edison Company for Authority to provide for a
Standard Service Offer Pursuant to Revised Code
4928.143 in the Form of an Electric Security Plan.

My name is Megan Addison and with me are
Jacky St. John and Gregory Price. We are the
Attorney Examiners assigned to preside over today's
hearing. This, I believe, is our eighth day of
hearing, and before we begin with the witnesses
scheduled to testify today, I would like to go
through a few administrative matters.

First of all, in response to a motion for
a subpoena filed by Ohio Consumers' Counsel on
November 2, 2023, the Attorney Examiners have read
the motion as well as the memorandum contra submitted
by the Companies on November 6, 2023.

1 We are going to deny the motion at this
2 time. OCC has provided no grounds for its request on
3 an expedited basis. As noted by the Companies, the
4 FERC audit report at issue in the motion upon which
5 OCC planned to question Mr. Lisowski on was issued in
6 February 2022. As such, we find no good cause has
7 been shown for failing to comply with the
8 Commission's subpoena rules, namely, Ohio Admin Code
9 4901-1-25.

10 More importantly, during the course of
11 this hearing, we denied taking administrative notice
12 of the FERC audit reports on several grounds, but as
13 it relates to the motion before us, we continue to
14 struggle to find the relevance of this document to
15 this proceeding, and consequently questions regarding
16 the audit report would also arguably lack the
17 appropriate relevance.

18 Secondly, OELC had moved to take
19 administrative notice of what has been marked in this
20 proceeding as OELC Exhibit 3. Mr. Willison, is it
21 OELC Exhibit 3; is that correct?

22 MR. WILLISON: That being the
23 FirstEnergy -- excuse me, the Energy Star website?

24 EXAMINER ADDISON: No, the Winter Storm
25 Elliott PJM report.

1 MR. ALEXANDER: Your Honor, I believe
2 that is the correct designation.

3 EXAMINER ADDISON: Thank you very much.

4 We are going to deny the motion to take
5 administrative notice of OELC Exhibit 3. First of
6 all, the two Company witnesses to which questions
7 were posed regarding this report were unable to
8 authenticate it or answer questions regarding its
9 content.

10 Consistent with earlier rulings, we also
11 note that the subsection of the Ohio Rules of
12 Evidence 201 relied upon by Mr. Proano is more
13 appropriate for stock indexes and information of that
14 nature.

15 Further, as noted by Mr. Keaney, this is
16 quite a voluminous document consisting of 130 pages
17 and falls well beyond the Commission's practice of
18 taking administrative notice of information produced
19 by PJM such as PJM's reestablishing its capacity
20 auction schedule which the Commission did in Case
21 Nos. 17-2391-EL-UNC, et al.

22 And, finally, we did have a motion for
23 pro hac vice, a motion to appear pro hac vice filed
24 in this docket on November 8, 2023, on behalf of
25 Robert Kelter, and we will be granting that motion at

1 this time.

2 Anything else from the parties before we
3 begin with our witnesses today?

4 MR. FINNIGAN: Your Honor, on behalf of
5 OCC, we would just like to proffer the testimony of
6 Mr. Lisowski in the record of the case. We believe
7 that if allowed to testify, Mr. Lisowski would talk
8 about a number of accounting problems and cost
9 misallocations that the Company has had over the last
10 several years, some of which appear to be related to
11 the House Bill 6 matter but others not.

12 And the ones that are not are the ones
13 that are detailed in the FERC audit report. That was
14 a FERC routine audit covering the period of 2015
15 through 2019. It had nothing to do with House Bill 6
16 other than lobbying costs were included in the review
17 as well as all the other Companies' costs.

18 But the evidence would show for
19 Mr. Lisowski that not only were the -- the House Bill
20 6 matter included 10 years of cost misallocations,
21 but the FERC audit separately and apart from that
22 included a number of other cost misallocations.

23 In addition, Mr. Lisowski would be
24 expected to testify that there are two riders in this
25 case, Rider DCR and Rider ELR, that are material --

1 materially impacted in those cost misallocations and
 2 improper accounting practices. As to Rider DCR,
 3 Mr. Lisowski would be expected to say that as
 4 detailed in the Blue Ridge audit report,
 5 20-1629-EL-RDR, filed on August 3 of 2021, that the
 6 revenue requirement for Rider DCR included costs that
 7 were improperly misallocated to the utilities.

8 In addition to that, Mr. Lisowski is
 9 expected to -- would be expected to testify that
 10 Rider D -- ELR was the subject of what later became
 11 the Commission Order in the 20-1629 case and this is
 12 an Order that was entered on December 15 of 2021
 13 where the Commission on its own motion found an
 14 apparent violation of 4928.145 for failure to
 15 disclose side deals in the previous FirstEnergy ESP
 16 case.

17 And it turns out -- and this information
 18 arose from the FirstEnergy Deferred Prosecution
 19 Agreement. And as detailed in the Deferred
 20 Prosecution Agreement and the Commission's Order of
 21 December 15, 2021, the underlying transaction that
 22 was not disclosed in this side deal involved Rider
 23 ELR.

24 And what happened in that case is the
 25 Company filed a Stipulation changing the terms and

1 conditions of Rider ELR in the ESP IV case and that
2 same day counsel for IEU filed a letter with the
3 Commission withdrawing from the case. Those were the
4 two documents that were detailed in the Deferred
5 Prosecution Agreement and also in the Commission's
6 Order opening an investigation into a possible
7 violation of 4928.145.

8 So the sum and substance of all this
9 would be that in this case where the -- where the
10 Company seeks reapproval of Rider DCR and Rider ELR,
11 there's a substantial amount of evidence that those
12 two riders were used in furtherance of criminal
13 activity at worst or at best negligence, and they
14 should not be approved in this case because at the
15 end of the day, the Commission needs to determine
16 whether these riders are just and reasonable. And
17 certainly it's not just and reasonable to use those
18 two riders the way the Company has as detailed in,
19 you know, what Mr. Lisowski's testimony would be.

20 So those -- his testimony would support
21 those findings, we believe, and -- and would be
22 material and relevant to this case. Thank you.

23 EXAMINER ADDISON: Thank you. Your
24 proffer is noted, but we will move on.

25 EXAMINER ST. JOHN: All right. And with

1 that, Mr. Lang, I'll turn things over to you.

2 MR. LANG: Thank you. The NRG Retail
3 Companies call Travis Kavulla.

4 EXAMINER ST. JOHN: Thank you.

5 (Witness sworn.)

6 EXAMINER ST. JOHN: Thank you. And have
7 the parties prearranged for a cross order, or shall
8 we just go -- excuse me, shall we just go around the
9 room as we typically do?

10 MR. LANG: I don't believe there is a
11 prearrangement. I do believe OELC has questions.
12 That's probably the place to start. Maybe the only
13 one.

14 EXAMINER ST. JOHN: Okay. Thank you.

15 And, Mr. Willison, I will turn things
16 over to you then.

17 MR. LANG: If I could -- if I could do my
18 little intro piece.

19 EXAMINER ST. JOHN: Of course. Thank
20 you. Monday morning.

21 MR. LANG: Yes. Thank you, your Honor.

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TRAVIS KAVULLA

being first duly sworn, as prescribed by law, was
examined and testified as follows:

DIRECT EXAMINATION

By Mr. Lang:

Q. Mr. Kavulla, can you introduce yourself,
please?

A. Yes.

THE WITNESS: And with apologies to your
Honors for jumping the gun on taking the witness
stand.

A. I am Travis Kavulla, Vice President for
Regulatory Affairs at NRG Energy.

MR. LANG: And, your Honors, you should
have in front of you what's been premarked as NRG
Exhibit 1, and I ask that it be marked as such right
now.

EXAMINER ST. JOHN: That will be so
marked. Thank you.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. (By Mr. Lang) Mr. Kavulla, do you have in
front of you what has been marked as NRG Exhibit 1?

A. I do.

Q. Can you identify it, please?

A. This is the direct testimony of myself on

1 behalf of NRG Retail Companies that I caused to be
2 filed in this proceeding.

3 Q. Do you have any corrections to make to
4 your testimony?

5 A. I do not.

6 Q. Mr. Kavulla, if I asked you the same
7 questions that are in this testimony today, would
8 your answers be the same?

9 A. They would.

10 MR. LANG: Your Honor, Mr. Kavulla is
11 available.

12 EXAMINER ST. JOHN: Thank you.

13 And at this point, Mr. Willison, I will
14 turn things over to you.

15 MR. WILLISON: Thank you, your Honors.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Willison:

19 Q. Good morning, Mr. Kavulla.

20 A. Good morning.

21 Q. My name is Paul Willison, and I represent
22 Ohio -- the Ohio Energy Leadership Council alongside
23 Mr. Proano.

24 I just have a few brief questions on your
25 testimony this morning. So to begin, you state on --

1 you testify on page 3, line 6 to 7, that the purpose
2 of your testimony "is to propose that FirstEnergy
3 utilities move all SSO customers to a retail rate
4 design that bills them on-peak and off-peak rates,"
5 correct?

6 A. That's correct.

7 Q. Great. You propose in the next sentence
8 that the time-of-day rates approved by the Commission
9 in Case No. 20-50-EL-ATA be continued but instead
10 implemented as the default rates for all SSO
11 customers with an advanced meter, correct?

12 A. Correct.

13 Q. And you then state that "Without this
14 change, Ohio customers are likely to continue
15 spending a very substantial amount of money in
16 support of FirstEnergy's metering rate base, without
17 realizing the full benefits of the smart grid,"
18 correct?

19 A. That's correct.

20 Q. Generally for purposes of this rate case,
21 what are the full benefits of a SmartGrid that you
22 reference?

23 A. It's really about conveying to retail
24 customers who elect not to shop a price signal that
25 are contours to the underlying cost structure of the

1 wholesale electricity market and, thus, encourages
2 organic demand response ultimately reducing costs of
3 capacity, energy, transmission, anything where the
4 costs associated with on demand service -- I should
5 clarify, serving demand at peak times are higher, so
6 by getting customers to avoid using it during those
7 times, you save not only them money but all
8 nonshopping customers.

9 Q. Thank you. So let's turn briefly to page
10 9, if you would. Let me know when you are on page 9
11 of your direct testimony.

12 A. I'm there.

13 Q. Yeah. So on page 9, line 13, to page 10,
14 line 1, you testify or you propose "that FirstEnergy
15 continue Time-of-Day Option (Non-Residential) but as
16 a default option used to bill all non-residential SSO
17 customers with an advanced meter under the existing
18 time-of-day rate design," correct?

19 A. That's correct.

20 Q. Why is an advanced meter a requirement to
21 be billed under time-of-day rates?

22 A. An advanced meter is capable of recording
23 usage on a more granular basis than a meter that can
24 only read, for example, monthly or less granular
25 interval.

1 Q. So an advanced meter can tell how much
2 load you are using at a specific point in time,
3 correct?

4 A. That's correct.

5 Q. Who determines whether a nonresidential
6 customer receives an advanced or interval meter?

7 A. I assume it's some combination of the
8 utility and the customer.

9 Q. Are nonresidential customers allowed to
10 purchase or install advanced or interval meters on
11 their own without FirstEnergy approval?

12 A. Nonresidential customers?

13 Q. Correct.

14 A. I do not know.

15 Q. Okay. Just a few more quick questions
16 here. Are you aware that the majority of
17 FirstEnergy's nonresidential customers lack advanced
18 interval -- or interval meter right now?

19 A. I -- I am aware that the deployment of
20 advanced metering technology through the grid
21 modernization process is focused on other customer
22 classes. But to answer your question specifically, I
23 am not aware of the percentages of deployment for the
24 customer classes that you are referring to.

25 Q. Okay. So how would your proposed

1 time-of-use rates work in practice assuming that the
2 majority of FirstEnergy's nonresidential customers
3 lack an advanced or interval meter?

4 A. Well, the time-of-day rates, like I
5 explained in the testimony, would be the opt out
6 rate, the default rate only for customers who do have
7 advanced metering technology deployed. And that
8 number includes customers across all classes but that
9 does mean there are some customers for whom
10 time-of-day rates would not exist on day one of the
11 implementation of this tariff as I described.

12 The reason for making the proposal that I
13 have is that we've seen in other jurisdictions that
14 time varying rates are at the top of mind for people
15 when they do first receive an advanced meter, and so
16 I am essentially encouraging the Commission and the
17 utilities not to miss the boat on the opportunity of
18 introducing a new retail rate design at the same time
19 or shortly thereafter meters are deployed and to make
20 sure that rate design like this is deployed for
21 customers who already have AMI technology.

22 Q. And so last question here, so how soon
23 after -- a nonresidential customer that doesn't have
24 an advanced meter, so how soon after that customer
25 obtains an advanced or interval meter would you

1 propose enrolling that customer in that time-of-use
2 SSO rate?

3 A. It could happen really as soon as the
4 computing software allowed or as late as the onset of
5 the next rate change for SSO rates. Those would be
6 the two options that are considered recommended.

7 Q. So as soon as possible; is that fair to
8 say?

9 A. That's fair to say.

10 MR. WILLISON: Okay. Your Honor, I have
11 no further questions.

12 Thank you, Mr. Kavulla.

13 THE WITNESS: Thank you, sir.

14 EXAMINER ST. JOHN: Thank you.

15 Any questions from FirstEnergy?

16 MR. ALEXANDER: No, thank you, your
17 Honor.

18 EXAMINER ST. JOHN: OEG?

19 MR. KURTZ: No questions, your Honor.

20 EXAMINER ST. JOHN: RESA?

21 MR. LONG: No questions, your Honor.

22 EXAMINER ST. JOHN: OCC?

23 MR. FINNIGAN: No questions, your Honor.

24 EXAMINER ST. JOHN: OMAEG?

25 MS. BOJKO: No questions, your Honor.

1 EXAMINER ST. JOHN: Kroger?

2 MS. CADIEUX: No questions, your Honor.

3 MR. HAYS: No questions, thank you.

4 EXAMINER ST. JOHN: Mr. Whitt?

5 MR. WHITT: No questions.

6 EXAMINER ST. JOHN: All right. Any
7 questions from Staff?

8 MS. BOTSCHNER-O'BRIEN: No questions,
9 your Honor.

10 EXAMINER ST. JOHN: Okay. With that
11 thank you very much for your testimony and you are
12 excused at this time.

13 THE WITNESS: Thank you, your Honors.

14 EXAMINER ADDISON: Thank you.

15 MR. LANG: And, your Honor, at this time
16 NRG Energy would move in their Exhibit NRG Exhibit
17 No. 1, please.

18 EXAMINER ST. JOHN: All right. And are
19 there any -- any objections to the admission of that
20 exhibit?

21 MR. ALEXANDER: No objection.

22 EXAMINER ST. JOHN: All right. Thank
23 you.

24 And that will be admitted.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 EXAMINER ST. JOHN: Thank you.

2 MR. LANG: Thank you, your Honor.

3 EXAMINER ST. JOHN: Looking at our
4 witness order for the day, I will go ahead and turn
5 things over to you, Mr. Kurtz.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MR. KURTZ: Thank you, your Honor. If I
8 could, this is a copy of Mr. Baron's testimony I have
9 marked as OEG Exhibit 1. There's no
10 cross-examination for him so I would just move the
11 admission of OEC Exhibit 1.

12 EXAMINER ST. JOHN: Any objections to the
13 admission of that testimony?

14 MR. ALEXANDER: No objection.

15 EXAMINER ST. JOHN: All right. That will
16 be admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 MR. KURTZ: Thank you, your Honor. Now
19 we call Randy Futral to the stand, please.

20 EXAMINER ST. JOHN: Good morning.

21 (Witness sworn.)

22 EXAMINER ST. JOHN: Thank you. Please
23 proceed.

24 MR. KURTZ: Thank you.

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RANDY A. FUTRAL

being first duly sworn, as prescribed by law, was
examined and testified as follows:

DIRECT EXAMINATION

By Mr. Kurtz:

Q. Would you state your name and business
address for the record, please?

A. Yes. It's Randy A. Futral and my address
is J. Kennedy and Associates, Inc., 570 Colonial Park
Drive, Suite 305, Roswell, Georgia 30075.

Q. Do you have in front of you a document
which is the direct testimony of -- your direct
testimony in this case?

A. Yes.

Q. Okay. If I were to ask you the same
questions as those contained therein, would your
answers be the same?

A. Yes.

Q. Any corrections or additions?

A. No.

MR. KURTZ: Your Honor, I tender the
witness for cross, and I also handed the court
reporter OEG Exhibit 2 which is Mr. Futral's direct
testimony.

EXAMINER ST. JOHN: Thank you. And that

1 will be so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 EXAMINER ST. JOHN: Again, not sure of
4 the -- if there is any preferred order but unless I
5 hear differently, I will just start working my way
6 around the room. Any questions from OELC?

7 MR. WILLISON: None, your Honor.

8 EXAMINER ST. JOHN: FirstEnergy?

9 MR. ALEXANDER: No, thank you.

10 EXAMINER ST. JOHN: RESA?

11 MR. LONG: No questions.

12 EXAMINER ST. JOHN: OCC?

13 MR. FINNIGAN: Yes, your Honor, I have a
14 few questions.

15 EXAMINER ST. JOHN: Go ahead.

16 MR. FINNIGAN: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Finnigan:

20 Q. Good morning, Mr. Futral.

21 A. Good morning.

22 Q. Mr. Futral, my name is John Finnigan. I
23 am an attorney for the Office of the Ohio Consumers'
24 Counsel. We represent residential consumers. And I
25 have some questions about your testimony regarding

1 the capital structure of the FirstEnergy Companies.
 2 Now, as I understand it, your testimony discusses the
 3 fact that certain costs related to the nuclear plants
 4 are included in the capital structure that's involved
 5 in this case.

6 A. That's correct.

7 Q. Now, are you aware that at one point the
 8 company owned these nuclear plants but then divested
 9 them?

10 A. They -- the Companies, all three of the
 11 Companies, divested by -- in 2005, yes, with the
 12 exception of these nuclear assets that had been
 13 transferred prior to goodwill.

14 Q. And what's your understanding as to why
 15 these nuclear plant costs remained as goodwill in the
 16 Company's capital structure even after the plants
 17 were transferred?

18 A. Well, I just know that they -- they did
 19 remain there. I don't know if there was
 20 consideration in 2005 as far as a transfer, but those
 21 assets were transferred in net book value in terms of
 22 the plant less accumulated depreciation and
 23 potentially associated ADIT, but these amounts
 24 resumed to be included in goodwill on the books of
 25 Toledo Edison and Cleveland Electric, and I am not

1 sure if there was a consideration at that time to
2 actually transfer those as well, but I simply know
3 they were not.

4 Q. Now, can you just generally tell us what
5 your background is in terms of experience and, you
6 know, reviewing the capital structures and revenue
7 requirements for different utility cases? How many
8 utility capital structures and revenue requirements
9 have you examined over the years? If you could give
10 us a rough estimate.

11 A. I would say that I've been in the
12 regulatory environment for electric utilities for 20
13 years, and I must have examined maybe 15 or 20
14 separate capital structures per year in that time
15 frame.

16 Q. So 15 or 20 times 20?

17 A. That would be correct.

18 Q. Now, in a normal utility capital
19 structure that you typically see, what's the
20 relationship between the utility's rate base and the
21 capital structure?

22 A. Usually you would hope that it's a
23 one-to-one basis. And that's because with your rate
24 base, you are trying to set rates that would actually
25 recover the cost of those assets and if you have

1 additional capitalization, then you have
2 capitalizations that you're not going to be getting
3 recovery for in a normal situation because you are
4 only getting recovery in a normal situation for your
5 rate base assets.

6 Q. And I take it that -- in this case you
7 observed that you don't have that one-to-one
8 correspondence between rate base and capital
9 structure as you testify in your prefiled testimony?

10 A. That's correct.

11 MR. ALEXANDER: Objection.

12 EXAMINER ST. JOHN: What's the basis of
13 the objection?

14 MR. ALEXANDER: Friendly cross.

15 EXAMINER ST. JOHN: At this point though
16 the witness has already started answering the
17 question. I already heard a yes.

18 What's your response, Mr. Finnigan?

19 MR. FINNIGAN: Your Honor, this witness
20 was called by the industrial consumers. We are just
21 trying to explore what the impacts are of this
22 witness's testimony. Quite frankly the witness laid
23 out some general principles in his testimony, but he
24 didn't really flesh it out in terms of what the
25 actual cost impacts are for consumers, and I am

1 simply trying to -- trying to draw out what is -- are
 2 the cost impacts in this case in terms of the impact
 3 on the SEET proceedings and the rider proceedings.
 4 So I can cut to the chase here and I think boil this
 5 down to one or two questions.

6 MR. KURTZ: I would just like to add
 7 this, if I could, your Honor. Under Mr. Alexander's
 8 logic, only the Company could cross-examine a witness
 9 who is advocating for lower revenue requirements, or
 10 at least potentially, and none of the other
 11 Intervenor would be authorized to do so, so I think
 12 that's overly broad. And at this point we don't know
 13 what OCC's position on any of this is because they
 14 haven't filed testimony or taken a position.

15 EXAMINER ST. JOHN: All right. Thank
 16 you.

17 MR. ALEXANDER: Your Honor, could I just
 18 respond very briefly?

19 EXAMINER ST. JOHN: Yes.

20 MR. ALEXANDER: The purpose of
 21 cross-examination is not to further develop points
 22 favorable to your client which Mr. Finnigan admitted
 23 is the purpose of his examination. It is to elicit
 24 additional helpful facts from a witness who he agrees
 25 with, that this is precisely what the friendly cross

1 objection was intended to address.

2 And to address Mr. Kurtz's point, I have
3 never argued that Intervenors are prohibited from
4 challenging other Intervenor witnesses. However, the
5 purpose of cross-examination is for that
6 cross-examination to, in fact, be adverse and not to
7 simply elicit additional helpful testimony you agree
8 with.

9 EXAMINER ST. JOHN: Thank you all.

10 MR. FINNIGAN: Your Honor, I'm simply
11 trying to find out what this gentleman's opinions
12 are. I can't say whether OCC would subscribe to this
13 witness's opinions or not until I hear what he
14 testifies to in terms of those cost impacts in SEET
15 cases and in individual rider cases. So, you know,
16 OCC may or may not support Mr. Futral's opinions, but
17 at this point we don't really know the full extent of
18 what his opinions are.

19 EXAMINER ST. JOHN: Mr. Finnigan, I
20 believe that you had stated that you would be willing
21 to go ahead and narrow this down to just a few
22 questions; is that right?

23 MR. FINNIGAN: Yes, your Honor. I can do
24 that. I am going to cut right to the chase on this
25 one.

1 EXAMINER ST. JOHN: Go ahead.

2 Q. (By Mr. Finnigan) So, Mr. Futral, do you
3 have an opinion as to what the cost impacts might be
4 from including the nuclear plants in the Companies'
5 capital structure in terms of future SEET cases and
6 future rider update cases?

7 A. Well, certainly I don't have a dollar
8 amount before you today, but I will state that
9 generally speaking in let's say a base rate case
10 going forward, I would assume that these nuclear
11 goodwill assets would not be included in rate base,
12 but since they are going to be included in some
13 respect in the capital structure, there could be
14 differences in both the riskiness of the Companies
15 leading to the selection of the ROE. They could be
16 related to higher interest rates so there could
17 certainly be additional costs there.

18 I would venture to say the bigger effect
19 would be the effect on the SEET proceedings and
20 that's because the SEET proceedings basically take
21 net income of each company and divide it by the
22 average equity to determine a return on equity and in
23 that you would have not only the capitalization that
24 is a part of equity but you also have the
25 capitalization that's driving interest rates --

1 driving interest expense. And so in both of those
2 situations, it could cost customers tens of millions
3 of dollars per year.

4 MR. FINNIGAN: That's all the questions I
5 have. Thank you, Mr. Futral.

6 EXAMINER ST. JOHN: Thank you.

7 Any questions from OMAEG?

8 MS. BOJKO: No questions, your Honor.

9 EXAMINER ST. JOHN: Kroger?

10 MS. CADIEUX: No questions, your Honor.

11 EXAMINER ST. JOHN: Mr. Hays?

12 MR. HAYS: Yes, your Honor. Can we go
13 off the record for just a minute?

14 EXAMINER ST. JOHN: Yes. Let's.

15 (Discussion off the record.)

16 EXAMINER ST. JOHN: Let's go back on the
17 record.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Hays:

21 Q. Mr. Futral, my name is Tom Hays. I hope
22 you had a good Thanksgiving.

23 A. Yes.

24 Q. And your first snow flake from Atlanta
25 was here, I take it?

1 A. That's correct, maybe the only one this
2 year.

3 Q. I represent NOAC which is an aggre --
4 which is a collection of agg -- communities where
5 aggregators serve 120,000 residential customers that
6 is the bulk of the residential customers in the
7 Toledo Edison territory. We also serve over 15,000
8 small commercial or industrial -- industrial
9 customers and family farms. And it's all in the
10 Greater Toledo area, northern Wood County.

11 I would like to ask you to turn in your
12 testimony to page 9, line 9. And following -- and I
13 am just going to read it. It says "Question: Under
14 standard ratemaking, do the rates of risky utilities
15 tend to be higher than for non-risky utilities?" And
16 the answer "As a general rule, yes. For example,
17 risky utilities tend to have lower credit ratings and
18 higher borrowing costs. The 1.6 billion of legacy
19 nuclear plant debt and equity capitalization on the
20 balance sheets of Toledo Edison and CEI have no
21 associated revenue stream because this capitalization
22 is not in rate base. This reduces their credit
23 metrics which makes them more risky. My testimony
24 highlights the issues the Commission should consider
25 in this ESP to hold rate -- ratepayers harmless for

1 this added risk." Did I read that correctly?

2 A. Yes.

3 Q. I then wanted to turn -- because the
4 questions have to do with what I see as the attention
5 here where you are identifying a problem but not
6 really offering an opinion on what its real solution
7 is, and I would like to find out if there is a real
8 solution to that problem you identify.

9 And I would ask you then if you could
10 look at page 6 of your testimony to the question in
11 the middle of the page, lines 9 to 17. And again,
12 just for convenience and the record, I'll read it,
13 "Do you have any disagreement with how the Companies
14 have recorded the 12 nuclear" -- excuse me. "Do you
15 have any" -- let me start once more. "Do you have
16 any disagreements with how the Companies have
17 recorded the nuclear cost related -- nuclear cost
18 related goodwill on their books?

19 "Answer: No. My focus is on the ESP
20 ratemaking for the legacy nuclear plant costs, not
21 the accounting. Fundamentally, ratepayers should be
22 held harmless for the capitalization required to
23 finance these nu -- legacy nuclear plant costs
24 incurred for the nuclear generating plants that are
25 no longer owned by Toledo Edison and CEI. As I have

1 stated at the outset, I am not suggesting that
2 FirstEnergy has done anything unreasonable or
3 imprudent. I am simply alerting the Commission to an
4 issue of potential ratemaking importance in this
5 case." My question -- my fundamental question for
6 you is if the Commission does -- follows your
7 recommendations, doesn't the underlying problem still
8 remain on the balance sheets?

9 A. Well, the underlying capitalization
10 remains on the balance sheets of the Companies, but
11 you could take ratemaking precautions to actually
12 alleviate the problems that are related to that
13 capitalization that's still on the balance sheet.

14 Q. If you -- let's say you wrote off these
15 legacy nuclear costs. Wouldn't that permanently
16 solve the problem?

17 A. Well --

18 MR. ALEXANDER: Objection.

19 EXAMINER ST. JOHN: Grounds?

20 MR. ALEXANDER: Friendly cross.

21 MR. HAYS: I don't think it's friendly at
22 all. He is saying, hey, let's just reverse the mess
23 on the balance sheet. We are suggesting that the
24 Commission needs to know if there is a permanent
25 solution and is there a way to eliminate this. Maybe

1 it's not reasonable. Maybe it's not prudent to
2 continue to leave them there and there is good
3 indications in his testimony that it's not.

4 EXAMINER ST. JOHN: I am going to go
5 ahead and sustain the objection.

6 Q. (By Mr. Hays) What is the cost of a
7 1 percent difference in the cost of capital where you
8 are talking about riskier companies pay more? Let's
9 just assume there's a 1 percent difference in the
10 costs of borrowing. What does that mean?

11 A. Well, if you have -- let's say you have a
12 50/50 debt-equity capitalization. You would take
13 your rate base times that 1 percent times 50 times
14 whatever expected difference that you would have in
15 your -- your debt interest rate that you would expect
16 from one company being riskier than the other. That
17 would -- that would not necessarily be totally
18 evident until you got to the crux of the matter of
19 actually issuing debt.

20 Q. Monetarily what would a 1 percent
21 difference mean to the Companies? Let me be more
22 clear, for Toledo Edison and for CEI.

23 A. It would be --

24 MR. ALEXANDER: Objection.

25 EXAMINER ST. JOHN: Grounds?

1 MR. ALEXANDER: Friendly cross.

2 EXAMINER ST. JOHN: Sustained.

3 Q. (By Mr. Hays) Could -- Mr. Futral, if I
4 could ask, could you turn to the page from Mr. Fu --
5 excuse me, from Mr. Fanelli's testimony of the --

6 MR. HAYS: Which is, I believe, Company
7 Exhibit 1, Trevor?

8 MR. ALEXANDER: 2.

9 Q. (By Mr. Hays) 2 to page 9 of 13 in
10 Attachment SLF-3.

11 A. I have that.

12 Q. And you had a chance to look this over?

13 A. Yes, just briefly.

14 Q. On line 6 it says, "Net change in
15 long-term debt," and this is for The Toledo Edison
16 Company projected sources and use of funds, and it
17 shows an -- would you agree with me it shows an
18 increase of \$99 million in 2025?

19 A. It does.

20 Q. If that is acquired through a loan, would
21 that not -- would not your principally -- you are
22 talking about risky -- riskier loans apply to this?

23 A. Yes.

24 Q. And this would -- this riskier loan would
25 be taken out perhaps before the next base rate case?

1 MR. ALEXANDER: Objection.

2 EXAMINER ST. JOHN: Grounds?

3 MR. ALEXANDER: Friendly cross.

4 EXAMINER ST. JOHN: Sustained.

5 MR. HAYS: Your Honors, if I may have a

6 minute?

7 EXAMINER ST. JOHN: Go ahead.

8 Let's go off the record.

9 (Discussion off the record.)

10 EXAMINER ST. JOHN: Let's go back on the

11 record.

12 MR. HAYS: No further questions, your

13 Honor.

14 Mr. Futral, thank you for coming up from

15 Atlanta into the cold weather.

16 EXAMINER ST. JOHN: Thank you.

17 Mr. Whitt?

18 MR. WHITT: No questions.

19 EXAMINER ST. JOHN: Staff?

20 MS. BOTSCHNER-O'BRIEN: No questions.

21 Thanks.

22 EXAMINER ST. JOHN: Okay. Mr. Kurtz, any

23 redirect?

24 MR. KURTZ: I do.

25 - - -

REDIRECT EXAMINATION

By Mr. Kurtz:

Q. Mr. Futral, do you remember some questions from Mr. Finnigan about the effect of the nuclear costs on the books of the utilities with respect to the significantly excessive earnings test?

A. Yes.

Q. You indicated it could be an issue of tens of millions of dollars?

A. Yes.

Q. There are two components to this, correct? No. 1, you start with per books earnings which includes the interest expense on the debt associated with the \$1.6 billion of goodwill, correct?

MR. ALEXANDER: Objection.

EXAMINER ST. JOHN: Grounds?

MR. ALEXANDER: Leading.

EXAMINER ST. JOHN: Sustained. And also, Mr. Kurtz, would you mind turning your microphone on as well.

Q. (By Mr. Kurtz) What is the -- for SEET purposes, what is the effect of using per books earnings which includes all interest expense?

A. Well, the per books earnings including

1 all interest expense would decrease the amount of
2 interest -- I'm sorry, of net income earnings, all
3 else equal.

4 Q. Okay. And so that would reduce earnings
5 making it less likely there would be a SEET
6 disallowance?

7 A. That's correct.

8 Q. Okay. Now let's talk about the equity
9 component. The definition of return on equity is
10 what?

11 A. It would be the net income divided by
12 your average equity.

13 Q. Okay. And would that average equity
14 include the equity component of the 1.6 billion
15 nuclear goodwill?

16 A. Yes, because all of the equity related to
17 that is included in the capitalization.

18 Q. And that would -- that would drive down
19 the per books ROE making it less likely there would
20 be a SEET disallowance?

21 A. That's correct.

22 MR. KURTZ: No further questions, your
23 Honor.

24 EXAMINER ST. JOHN: All right. Thank
25 you.

1 Mr. Finnigan, do you have any recross?

2 MR. FINNIGAN: No further questions,
3 thank you.

4 EXAMINER ST. JOHN: Mr. Hays?

5 MR. HAYS: No, thank you.

6 EXAMINER ST. JOHN: At this time would
7 you like to move for the admission of OEG Exhibit 2?

8 MR. KURTZ: Thank you, your Honor. I do.

9 EXAMINER ST. JOHN: And are there any
10 objections to the admission of this exhibit?

11 MR. ALEXANDER: No objection.

12 EXAMINER ST. JOHN: Okay. That will be
13 so admitted.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER ST. JOHN: Thank you,
16 Mr. Futral.

17 EXAMINER ADDISON: Thank you very much.
18 Mr. Kurtz.

19 MR. KURTZ: Thank you, your Honor. We
20 call Kevin Murray, please.

21 MR. FINNIGAN: Your Honor, may we take a
22 short break before Mr. Murray testifies?

23 EXAMINER ADDISON: He already picked up
24 his box.

25 MR. FINNIGAN: He needs a rest after

1 carrying that box.

2 EXAMINER ADDISON: Let's go off the
3 record. We will take a short 10-minute break before
4 we take up the testimony of Mr. Murray.

5 (Recess taken.)

6 EXAMINER ADDISON: Let's go back on the
7 record.

8 Mr. Kurtz, I believe you had already
9 called Mr. Murray?

10 MR. KURTZ: Yes.

11 EXAMINER ADDISON: Please raise your
12 right hand.

13 (Witness sworn.)

14 EXAMINER ADDISON: Please be seated and
15 if you could turn on your microphone, Mr. Murray.

16 - - -

17 KEVIN M. MURRAY

18 being first duly sworn, as prescribed by law, was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 By Mr. Kurtz:

22 Q. Mr. Murray, would you state your name and
23 business address for the record, please.

24 A. My name is Kevin M. Murray. My business
25 address is 5856 Newbridge Drive, Dublin, Ohio 43017.

1 Q. Do you have in front of you a document
2 marked as Direct Testimony of Kevin Murray?

3 A. Yes.

4 Q. Okay. This was prepared by you or --

5 A. Yes.

6 Q. -- under your direct supervision?

7 A. Yes.

8 Q. Okay. If I were to ask you the same
9 questions, would your answers be the same?

10 A. Yes.

11 Q. Any corrections or additions?

12 A. I have one correction. On Exhibit KMM-1,
13 I omitted a case that needs to be added. It would be
14 the very first case on the list. That is in the
15 Matter of the Application of Ohio Power Company for
16 Authority to Establish a Standard Service Offer
17 Pursuant to Section --

18 EXAMINER ADDISION: I think it should be
19 4928.

20 A. 4928.143 Ohio Revised Code in the Form of
21 an Electric Security Plan, Case No. 23-23-EL-SSO.

22 Q. Okay. Have you provided the Bench with
23 copies of this corrected --

24 A. Yes. It has one typo in it as the Bench
25 noted.

1 MR. KURTZ: Your Honors, with this
2 correction to his resume, I tender the witness for
3 cross.

4 EXAMINER ADDISON: Thank you very much,
5 Mr. Kurtz.

6 OELC, any questions?

7 MS. BOJKO: Your Honor, would this be a
8 good time to entertain a motion to strike?

9 EXAMINER ADDISON: Absolutely.

10 MS. BOJKO: Your Honor, at this time
11 OMAEG moves to strike the -- some of the attachments
12 of Mr. Murray. We move to strike KMM-2, PJM report.
13 I think it might be easier if I list and then give
14 the explanation.

15 EXAMINER ADDISON: I think that makes
16 sense.

17 MS. BOJKO: Thank you. Attachment KM-3,
18 which is a letter to stakeholders not drafted by
19 Mr. Murray.

20 EXAMINER ADDISON: Ms. Bojko, did you
21 mean KMM-3?

22 MS. BOJKO: Oh, yes.

23 EXAMINER ADDISON: Okay.

24 MS. BOJKO: My apologies. Attachment
25 KMM-4, which is a letter to FERC not drafted or

1 signed by Mr. Murray. Also Attachment KMM-5, which
2 is a news release, again not drafted or from an
3 agency of which Mr. Murray works. And KMM-6 is
4 testimony of a FERC Commissioner, not a FERC order,
5 testimony in a -- in a proceeding in front of the
6 U.S. Senate of one FERC Commissioner. Attachment
7 KMM-7, which is an opening statement of a
8 Commissioner, again not a FERC order but a FERC
9 Commissioner's opening statement to the Senate
10 Committee.

11 And then we have KMM-8, which is a
12 written statement of Commissioner Conway, not a PUCO
13 order, a statement of one Commissioner to a forum.
14 And then Attachment KMM-9 is a NERC announcement.
15 It's not an agency production. It's an announcement.
16 It's not an order, a ruling.

17 And then we have Attachment KMM-10, which
18 is testimony of James Robb who is the President and
19 CEO of NERC in front of a FERC -- I'm sorry. This is
20 in front of the U.S. Senate as well, the Committee on
21 Energy and National Resources. It is testimony, not
22 a NERC order or ruling.

23 And then Attachment KMM-11 is comments of
24 the Federal Advocacy's Office of the PUCO. It is not
25 a PUCO order. It's not a FERC order. It's comments

1 in un -- in a different proceeding. And then there
2 is Attachment KMM-12 which is comments in front of
3 the Environmental Protection Agency in a different
4 unrelated proceeding. And there's attachments to
5 that one too, your Honor.

6 EXAMINER ADDISON: By attachments you
7 mean the appendices?

8 MS. BOJKO: Yes, thank you. And then
9 Attachment KMM-14, which is a tariff in -- of the
10 Indianapolis Power & Light Company in a different
11 state unrelated to the proceeding before the
12 Commission. Then there's Attachment KMM-15 which is
13 Louisville Gas & Electric Company tariff in a
14 different state unrelated to this proceeding.

15 And that is it, your Honor.

16 EXAMINER ADDISON: Are you sure that's
17 all?

18 MS. BOJKO: Well, your Honor, that's
19 important to note because these attachments are
20 attachments of the sort that the Commission does not
21 historically allow into proceedings. They are a
22 wholesale dump of comments and documents that the
23 witness did not write. The authors of these
24 documents aren't here to testify. They are not here
25 to be cross-examined on. It's pure hearsay.

1 Mr. Murray has no personal knowledge of
2 these documents or the writings therein. He did not
3 participate in these documents. They are not FERC
4 orders. They are not agency publications. They are
5 not business records of a particular agency because
6 they are testimony or they are comments by various
7 parties and entities. So these types of documents
8 have historically not been allowed. You -- the Bench
9 just denied a PJM report. There is a PJM report here
10 that's very similar to the one that you denied to
11 take administrative notice of.

12 So because Mr. Murray cannot be
13 cross-examined on these documents because he was not
14 the author of these documents, they haven't been
15 authenticated, and because they are not -- they don't
16 meet any exceptions to the hearsay rule, they should
17 be excluded from the evidentiary record.

18 I would just point out that these are
19 also similar documents that your Honor struck in a
20 prior proceeding last month, so similar with the past
21 precedent that has been created by the Commission, we
22 think that these documents should be struck. Thank
23 you.

24 MR. KURTZ: Your Honor, these are
25 documents that typically historically are always

1 admitted by the Commission. We have a witness who is
2 familiar with every one of these documents and is
3 able to be cross-examined on every one of these
4 documents. Unlike that PJM report that neither of
5 the FirstEnergy witnesses had ever seen before that
6 you denied administrative notice of it, this is
7 completely different. Here this is a witness
8 sponsoring these documents.

9 The -- Ms. Bojko would limit what the
10 Commission is allowed to see in such a drastic
11 mechanism that -- that the Commission would be
12 deprived of relevant evidence on very important
13 issues, the reliability issues going on throughout
14 PJM, the concern of FERC, NERC, regarding reliability
15 and the effect of the interruptible rate program in
16 Ohio on that reliability program.

17 So this is very relevant. It's not --
18 it's not hearsay because these are authenticated, for
19 example, testimony in front of Congress under oath.
20 The Commission should be aware of these issues and
21 can give them the appropriate weight when deciding
22 the case, so it is an overbroad reading of -- that
23 would really hamstring the Commission, the
24 Commissioners. Ms. Bojko doesn't even want
25 Mr. Conway's statements in the FERC -- PUCO FERC

1 Staff's comments. What could be more relevant for a
2 Commission's decision than that?

3 So Mr. Murray is here to answer questions
4 on these -- on these documents, and they should be
5 admitted and given the appropriate weight.

6 EXAMINER ADDISON: Have we typically --
7 excuse me. Have we typically allowed news releases
8 or other news publications to be part of the record,
9 Mr. Kurtz? I believe that was a routine item that we
10 did not allow in the ESP IV proceeding, if I recall
11 correctly. Is that true?

12 MR. KURTZ: Well, I don't recall that.
13 To me a news release of PJM is different than a
14 newspaper story.

15 MR. FINNIGAN: Your Honor, may I be
16 heard?

17 EXAMINER ADDISON: You may.

18 MR. FINNIGAN: Your Honor, OCC supports
19 Ms. Bojko's motion to strike except for items KMM-14
20 and 15, the two tariffs. We believe that these are
21 admissible. However, as to all the other documents
22 that she listed, we believe that those should be
23 stricken, especially the ones that pertain to
24 testimony or statements in -- because these are
25 testimonies and statements by other persons. And

1 Mr. Murray is here to state what his views might be
2 on those things, and we can question Mr. Murray about
3 his views.

4 But more importantly, we can't question
5 the other persons who filed these testimonies or made
6 these statements as to what their views are. And if
7 this type of information is admissible in Commission
8 proceedings without allowing the parties the right of
9 cross-examination of the people that prepared these
10 underlying testimonies, this is depriving parties of
11 their rights of cross-examination and of undue
12 process to have a full and fair hearing where we
13 would be entitled to draw out issues that are raised
14 in these person's testimonies, but we can point out
15 possible errors or incorrect assumptions and so forth
16 which is the whole purpose of cross-examination.

17 So these documents are clearly being
18 offered for the truth of the matters asserted in the
19 testimonies and other statements and comments and,
20 therefore, these appear to be a clear violation of
21 the hearsay rule. Thank you.

22 MR. KURTZ: Your Honors.

23 EXAMINER ADDISON: Mr. Kurtz.

24 MR. KURTZ: Mr. Finnigan is raising an
25 impossible standard. Unless we were to subpoena

1 the -- Mr. Robb who is the CEO of NERC, the North
2 American Electric Reliability Council, the Commission
3 would be deprived of his view of the reliability
4 crisis that this country is facing.

5 So the -- Mr. Murray is here to stand
6 cross-examination on those documents. We can't be
7 expected to subpoena Commissioner Conway to testify,
8 but he did submit testimony. We can't be expected to
9 subpoena the PUCO Ms. Parrot on the federal advocacy
10 issues.

11 So the question is is this information
12 relevant and helpful to the Commission's decision
13 making? Nobody's due process rights are violated.
14 They can ask Mr. Murray whatever they want. If he
15 doesn't know the answers, you can take that into
16 account when -- when recommending to the Commission.
17 But the value of these documents far outweighs any
18 inconvenience to -- to the Intervenor.

19 MS. BOJKO: Your Honor, may I briefly
20 respond --

21 EXAMINER ADDISON: You may.

22 MS. BOJKO: -- to one of the comments?
23 While I think Mr. Conway -- just to be clear
24 Commissioner Conway's comments are extremely helpful
25 in the State of Ohio, these comments were in a

1 different proceeding, and if you remember in case
 2 21-477, OMAEG's witness Mr. Seryak tried to rely on
 3 Commissioner's comments in orders, tried to rely on
 4 past PUCO orders and concurring and dissenting
 5 opinions. And the Bench struck that testimony. So
 6 if orders and concurring and dissenting opinions,
 7 which are records of the Commission in a different
 8 proceeding, are not relevant to the case, then
 9 neither can we say that testimony in a different
 10 proceeding is now relevant to this case. It's not
 11 the same case, so relevancy is important. But it is
 12 also clear classic hearsay.

13 MR. KURTZ: Your Honor.

14 MS. BOJKO: OCC tried to subpoena
 15 witnesses to dispute some of these issues and that
 16 was denied this morning. This is classic hearsay and
 17 it cannot be allowed in.

18 EXAMINER ADDISON: Dispute some of these
 19 issues, Ms. Bojko?

20 MS. BOJKO: Yes. I think one of the
 21 witnesses that OCC requested to subpoena would touch
 22 on some of these issues.

23 MR. KURTZ: The witness --

24 MS. BOJKO: But Mr. Murray --

25 EXAMINER ADDISON: Hold on. Mr. Kurtz.

1 MR. KURTZ: I have no idea what Ms. Bojko
2 is referring to about her witness in a prior case and
3 what was struck. Here these documents are clearly
4 relevant and important for the Commission's decision.
5 The -- the accounting person that OCC wanted to
6 address was not on these issues at all. It was on
7 misallocations -- alleged misallocation of funds and
8 did they make their way into rates in Ohio.

9 These documents are extremely important
10 to the Commission. They can -- the Commissioners can
11 give this due weight whatever they want, and the
12 rights of the other parties to the case can be
13 addressed through cross-examination of Mr. Murray.
14 This is standard -- standard material that any
15 Commission in the country would want to have in front
16 of them when deciding reliability issues like the
17 interruptible contribution.

18 EXAMINER ADDISON: Thank you, Mr. Kurtz.
19 Can you speak just briefly on KMM-14 and KMM-15, why
20 tariffs for companies that are not operating in Ohio
21 would be relevant to this proceeding?

22 MR. KURTZ: Yes. The interruptible rates
23 offered by Ohio neighbors have an effect on economic
24 development in the state policy of encouraging Ohio's
25 competitiveness in the global economy. And so when

1 competing for new loads, it's certainly relevant to
2 understand what other states do for their industrial
3 interruptible customers, simple as that.

4 EXAMINER ADDISON: Thank you.

5 We are going to take just a few minutes
6 given the volume of the documents before us, just a
7 few minutes to go through each and every one of
8 these, and we'll return in about 10 minutes with our
9 ruling. Thank you.

10 (Recess taken.)

11 EXAMINER ADDISON: Let's go ahead and go
12 back on the record.

13 Before breaking, Ms. Bojko had moved to
14 strike various attachments to Mr. Murray's prefiled
15 direct testimony. We are prepared to provide our
16 rulings at this time. We will be granting the motion
17 to strike as to Attachments KMM-2, KMM-3, KMM-4,
18 KMM-5, KMM-9, KMM-12, KMM-14, and KMM-15.

19 We will be denying the motion to
20 strike -- well, alternatively we will be denying the
21 motion to strike; however, we will be taking
22 administrative notice of the following attachments:
23 KMM-6, KMM-7, KMM-8, KMM-10, and KMM-11. And just to
24 clarify, we'll be taking administrative notice to the
25 extent that these organizations believe that there is

1 a noted reliability issue, not to the extent of
2 whether such an issue exists. Moreover, we do find
3 the sworn testimony to be in a different bucket, so
4 it should be treated differently than the -- for
5 example, the PJM report noted in KMM-2 where the
6 information is unsworn. There would be an issue with
7 cross-examination as that author is not present here
8 today but we will take administrative notice of those
9 noted attachments as I went through before.

10 MS. BOJKO: Thank you, your Honor.

11 EXAMINER ADDISON: Of course. And I do
12 just want to add as to KMM-14, KMM-15, and KM-12, we
13 do note that there -- there does appear to be a
14 relevance issue. We find very little probative value
15 in these attachments. So I just wanted to add that
16 additional -- additional reasoning behind our rulings
17 this morning. Just squeaking in so.

18 All right. Ms. Bojko, I will note that
19 there are references to the attachments in
20 Mr. Murray's testimony. Will you be moving to strike
21 those various references at this time?

22 MS. BOJKO: Your Honor, I think that's
23 appropriate too -- I was trying to look through what
24 you did. I think that if you struck the document in
25 whole and not took administrative notice, then it

1 would be appropriate to strike quotations that were
2 made. For instance, there was a quote from a couple
3 of the attachments. I was trying to look to see
4 what -- which ones were struck. I think that would
5 be appropriate.

6 MR. KURTZ: Your Honor, I would just say
7 this about the testimony, an entire document is
8 different than an excerpt that the witness is fully
9 capable of standing cross-examination on and asking
10 any questions, so I would just say that the excerpts
11 in this written testimony are different than the
12 entire document itself.

13 EXAMINER ADDISON: Thank you, Mr. Kurtz.
14 Would you like to respond to that,
15 Ms. Bojko?

16 MS. BOJKO: I do agree, unlike the last
17 case that I cited to before, I think that the expert
18 can read a document.

19 EXAMINER ADDISON: Well, and I will just
20 note for the record I am not sure if your
21 characterization of my rulings in that prior case
22 were quite accurate so but please go on.

23 MS. BOJKO: Well, my point was that there
24 was associated testimony that was struck in the prior
25 cases, and you're right, it's on appeal currently,

1 and but for precedence sake is one of the important
2 elements here. And my point is I am not striking --
3 I believe that an expert can read documents, rely on
4 those documents, and provide an opinion on those
5 documents, so I would not move to strike an expert's
6 reliance on and statements regarding and conclusions
7 regarding that.

8 But I think when he quotes somebody
9 else's statement, that isn't his own statement and
10 that would be inappropriate and that should be
11 struck. So, for example, on page 7, there is a quote
12 from the -- the Attachment KMM-2 that the motion to
13 grant was just struck [SIC], so it would be
14 appropriate to strike the quote which is on lines 10
15 through 15. So we would move to strike the quote.
16 His conclusions about the document could stand.

17 Similarly, on line 17, there is a quote
18 that goes over to line 2 on page 8. That is from a
19 document that has been struck from the record so it
20 would be appropriate to strike that. The conclusions
21 about those documents could stand.

22 The next one is 9 -- or footnote 9 which
23 is on page 8. There is a quote and I think the
24 sentence would -- that would be struck would be on
25 line 11 through line 17.

1 And I think if your Honors took
2 administrative notice of quotes, then those documents
3 have been noticed, so I think those quotes could
4 remain.

5 But I believe the quote on page 11, it's
6 quoting to the PJM report, it starts on the bottom of
7 page 10, is the full sentence, those comments state
8 that that should be struck over to page 11, line 8.

9 There's another quote from the same
10 report on page 11, starting on --

11 EXAMINER ADDISON: I believe that was
12 Commissioner Conway's.

13 MS. BOJKO: Yeah. Your Honor, the
14 citation is on -- I see. My apologies. I was
15 looking at the footnote 13. Okay. Withdraw that
16 motion.

17 I'm sorry, your Honor. For clarity did
18 you -- did you take administrative notice of 12?

19 EXAMINER ADDISON: No, we did not.

20 MS. BOJKO: Okay. So the quote on page
21 14, lines 11 through 14, would be struck. And, your
22 Honor, I did not write down 13, what category that
23 was in.

24 EXAMINER ADDISON: I don't believe you
25 moved to strike Attachment 13, or KMM-13.

1 Mr. Murray, your KMM-13 which is
2 titled -- which is a chart titled PJM historical
3 demand response, did you create this chart?

4 THE WITNESS: Yes, I did.

5 MS. BOJKO: Thank you, your Honor.

6 THE WITNESS: Let me clarify that. By
7 created this, I copied this from a report I wrote
8 that PJM had, so I didn't actually generate this, but
9 I created the actual exhibit.

10 EXAMINER ADDISON: So you took a chart
11 from a separate report.

12 THE WITNESS: Yes.

13 EXAMINER ADDISON: And just inserted it
14 as an exhibit.

15 THE WITNESS: Yes.

16 EXAMINER ADDISON: Okay. Just to move
17 things along here, we will also be striking on page 7
18 of Mr. Murray's testimony beginning at lines 10
19 starting with "In its recent whitepaper," through
20 lines 15, ending with "resources" and the reference
21 to the footnote 6.

22 We will also be striking page 7, line 17,
23 starting with "The PJM Board of Managers" through
24 page 8, lines 2, ending with "transition" and
25 including footnote 7.

1 Moving down to page 8, lines -- line 11,
2 excuse me, beginning with "In the press release
3 announcing," we will be striking that phrase through
4 line 17 ending with "sources" and footnote 9.

5 And I apologize. I believe I missed one.
6 If we move back up on page 8, line 3, beginning with
7 "On April 11, 2023," through line 5, ending with
8 "reliability" and reference to footnote 8.

9 MR. KURTZ: Your Honor, that's not a
10 quote. That's just his interpretation.

11 EXAMINER ADDISON: Oh, I apologize. You
12 are correct, Mr. Kurtz. I apologize for that. We
13 will strike my stricken language. Getting ahead of
14 myself.

15 Moving to page 10, on line 21, beginning
16 with "Those comments state," through page 11, line 8,
17 in its entirety including reference to footnote 13.

18 And then moving on to page 14, line 11,
19 beginning with "The Joint RTOs" through line 14,
20 including reference to footnote 19.

21 And then, Ms. Bojko, correct me if I am
22 wrong, were you also moving to strike the references
23 to Attachment KMM-14 and 15 on page 16, or would that
24 also be another example of allowing Mr. Murray to
25 testify to those particular prices?

1 MS. BOJKO: Your Honor, I think as an
2 expert under 702, he can review tariffs. The tariffs
3 themselves should not be wholesale into evidence.

4 EXAMINER ADDISON: Thank you.

5 MS. BOJKO: I think we can rely on those.

6 EXAMINER ADDISON: Thank you. The Bench
7 agrees. I believe that's -- I believe that's all the
8 references that I had noted, Ms. Bojko.

9 MS. BOJKO: Thank you, your Honor.

10 EXAMINER ADDISON: Are there any
11 additional motions to strike at this time?

12 MS. BOJKO: No, thank you, your Honor.

13 EXAMINER ADDISON: Thank you.

14 All right. OELC, questions?

15 MR. WILLISON: None, your Honor. Thank
16 you.

17 EXAMINER ADDISON: On behalf of
18 FirstEnergy?

19 MR. ALEXANDER: No, thank you, your
20 Honor.

21 EXAMINER ADDISON: Mr. Long?

22 MR. LONG: No, your Honor. Thank you.

23 EXAMINER ADDISON: Mr. Finnigan?

24 MR. FINNIGAN: No, your Honor.

25 EXAMINER ADDISON: OMAEG?

1 MS. BOJKO: Yes, thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Ms. Bojko:

5 Q. Still morning. Good morning, Mr. Murray.
6 Mr. Murray, you are here today to testify about
7 FirstEnergy's ESP V proposal and its proposed change
8 to the ELR program; is that correct?

9 A. Yes, correct in part.

10 Q. I'm sorry. Just can't hear you.

11 A. Correct in part.

12 Q. And you are also here to talk about the
13 state of the industry; is that what you're
14 referencing, sir?

15 A. The state of the industry and the general
16 transition the industry has gone through the last
17 couple of years and projected to continue through the
18 next few years.

19 Q. And today you are testifying as a
20 consultant on behalf of Ohio Energy Group; is that
21 correct?

22 A. That's correct.

23 Q. Let's turn to page 3 of your testimony.

24 MS. BOJKO: I'm sorry. Have you marked
25 this testimony? Have we done direct examination?

1 EXAMINER ADDISON: I believe we have.

2 MR. KURTZ: So OEG Exhibit 3.

3 EXAMINER ADDISON: Yes. Thank you.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. Are you on page 3 of your testimony that
6 was filed October 23, 2023?

7 A. Yes.

8 Q. Here you are testifying that
9 interruptible programs provide certain reliability
10 benefits to all Ohio customers; is that correct?

11 A. That's correct.

12 Q. And interruptible programs promote
13 economic development and make both the State and
14 participating customers more competitive; is that
15 correct?

16 A. That's correct.

17 Q. And since interruptible programs can
18 increase reliability and make both Ohio and the
19 participants more economically competitive, more
20 participants in such programs could increase these
21 benefits, correct?

22 A. That's correct.

23 Q. So you would agree with me that
24 interruptible programs and other economic development
25 tools should be available to all similarly-situated

1 customers in order to be competitively neutral?

2 A. The Commission can decide whatever
3 limitations it wants to make on the availability of
4 interruptible rates. Historically it's placed limits
5 on interruptions. Having said that, it's entertained
6 additional interruptible customers through reasonable
7 arrangements.

8 Q. And you are supporting FirstEnergy's ELR
9 proposal with several modifications; is that correct?

10 A. That's correct.

11 Q. And generally speaking without naming
12 names, who can currently participate in the ELR under
13 the existing ESP IV?

14 A. I believe it's customers that were on
15 interruptible rates on a date -- dating back to 2008.
16 I can't remember the exact date but that's the year.
17 Essentially customers having that status were
18 grandfathered. Any additional customers after that
19 date would have been a result of, for example, a
20 specific Commission approval through -- of a
21 reasonable arrangement.

22 Q. And those that were eligible back on the
23 date certain, those were eligible because they were
24 signatory parties to a particular electric security
25 plan; is that correct?

1 A. I do not know.

2 Q. You were the Executive Director of IEU
3 which was one of the signatory parties in ESP IV; is
4 that correct?

5 A. That's correct.

6 Q. And as a signatory party, IEU's members
7 were able to continue in the ELR; is that correct?

8 A. I don't know if that's a result of being
9 a signatory party.

10 Q. It is a true statement though that IEU
11 members were able to participate in the ELR program
12 during ESP IV; is that correct?

13 A. I do know there are some IEU -- former
14 IEU-Ohio members that were able to participate.

15 Q. Do you know how many total customers are
16 eligible to participate in the ELR under ESP IV?

17 A. I don't know the exact number.

18 Q. But it's your understanding that whatever
19 that number is, if it was 24, for instance, that that
20 would continue under ESP V?

21 A. That's my understanding of the Company's
22 proposal.

23 Q. You would agree -- I believe you just
24 stated this, you would agree that other C&I customers
25 with interruptible -- there are other C&I customers

1 with interruptible load.

2 A. There could be.

3 Q. And the additional interruptible load
4 could provide increased reliability benefits; is that
5 right?

6 A. It's possible.

7 Q. And it's fair to say that there are other
8 interruptible load resources in FirstEnergy's Ohio
9 territory that are not currently enrolled in Rider
10 ELR.

11 A. There may be.

12 Q. To your knowledge, are there other
13 members of OEG that are not currently eligible to
14 participate in the ELR that could interrupt?

15 A. I do not know.

16 Q. Would residential load be interruptible
17 say with the use of smart thermostats?

18 A. It could be. I believe -- I would have
19 to look at the Application to confirm this, but I
20 believe the Companies have proposed a residential
21 peak -- peak demand program as part of their
22 Application.

23 Q. Do you know what -- how much total
24 available interruptible load there is in
25 FirstEnergy's service territories?

1 A. I do not know.

2 Q. Is there a limit to the amount of
3 available interruptible load needed?

4 A. Could you rephrase?

5 Q. Sure. Do you believe that there is a --
6 some kind of limit on the amount of interruptible
7 load that could be useful to FirstEnergy or Ohio?

8 A. At some point, yes, there would be a
9 limit on the amount that's useful.

10 Q. If there was more local thermal power
11 generation, would less interruptible load be needed?

12 A. Theoretically, yes.

13 Q. Who decides how much capacity is needed
14 in FirstEnergy's Ohio territory?

15 A. By capacity do you mean interruptible
16 load, or are you talking generation capacity?

17 Q. No. I am talking -- I'm talking
18 generation capacity.

19 A. Right now, that's decided by the market.

20 Q. So now let's ask the other one that you
21 just asked about. Who determines how much
22 interruptible load is needed in FirstEnergy's Ohio
23 territory?

24 A. In part it's limited by the limitations
25 on Rider ELR. However, customers have the ability to

1 participate in PJM's demand response program directly
2 and that's not physically limited in any sense.
3 It's limited by whatever clears the market.

4 Q. And who decides which capacity --
5 generation capacity resource meets the capacity needs
6 for -- for FirstEnergy's territory?

7 A. Again, that's -- that's driven by the
8 market, PJM's capacity market.

9 Q. And who decides how much they get paid
10 when they clear the market?

11 A. That's a function of the market clearing
12 price.

13 Q. So the market clearing price that's in
14 PJM's auction.

15 A. Yes. The one exception would be
16 customers can -- generation suppliers and customers
17 can agree on a bilateral contract for capacity so
18 that would be submarket clearing price.

19 Q. Sure. Do you know if all customers
20 participating in the ELR currently curtail the same
21 equipment?

22 A. No, they would not curtail the same
23 equipment.

24 Q. Is it fair to say that all -- it's fair
25 to say, isn't it, that all customers do not

1 manufacture the same products?

2 A. I believe that's the case.

3 Q. And you would agree it -- but would you
4 agree if ELR participants have different
5 manufacturing processes and different equipment, then
6 the cost of curtailment differs for each ELR
7 participant?

8 A. Can you define what you mean by cost of
9 curtailment?

10 Q. Well, there's a cost to curtail. You
11 stop running your machinery, and then you stop likely
12 producing your products; is that correct?

13 A. Yes.

14 Q. So there would be a cost to curtailing
15 your load at any given point, correct?

16 A. Yes, and theoretically would be different
17 for each customer.

18 Q. And curtailment could mean less expensive
19 for some manufacturers than others, correct?

20 A. Correct.

21 Q. Does the ELR program select the least
22 cost interruptible load resource?

23 A. Can you define what you mean by "select"?
24 Is that eligibility to participate, or are you
25 talking about actual curtailment events?

1 Q. I am talking about actual curtailment.
2 Does the ELR program have a process in place that
3 would select the least-cost interruptible load
4 resource?

5 A. Not to my knowledge.

6 Q. And you would agree that a competitive
7 auction for interruptible resources could select the
8 least-cost resource, right?

9 A. I don't believe that would be practical.

10 Q. Okay. PJM already runs a competitive
11 auction that procures the least-cost capacity
12 resource including interruptible load, doesn't it?

13 A. Yes.

14 Q. Are you aware that Staff in this case is
15 recommending an expansion of the ELR program?

16 A. I am aware of that.

17 Q. Are you aware that Staff recommends that
18 the ELR program be increased by 50 megawatts each
19 year for five years?

20 A. I believe that's the case.

21 Q. And that additional capacity would be
22 made available to new participants first and then
23 current participants; is that your understanding?

24 A. I believe that's the case.

25 Q. You wouldn't be opposed to expand the ELR

1 program, would you?

2 A. In terms of making additional megawatts
3 available?

4 Q. Correct.

5 A. That's correct.

6 Q. And you are also testifying that the ELR
7 credits should be decreased to \$7 kW a month over the
8 course of four years instead of FirstEnergy's
9 proposal; is that correct?

10 A. No, I don't believe that's correct. I
11 believe my recommendation is identical to the
12 Companies' proposal with the exception of it's
13 shortened to four years as opposed to being over
14 eight years.

15 Q. Thank you for that clarification. Isn't
16 it true that the current credits available to ELR
17 participants are higher than market -- market
18 capacity prices in PJM?

19 A. That's currently correct.

20 Q. And the credits are paid to ELR
21 participants in exchange for committing to curtail
22 their interruptible load in an emergency curtailment
23 event, correct?

24 A. Yes, but they could be curtailed for
25 other reasons as well.

1 Q. And -- okay. We'll come back to that.
2 The credits first -- the credits are recovered from
3 customers who are not ELR participants; is that
4 correct?

5 A. That's correct.

6 Q. So let's now look at page 6 of your
7 testimony on lines 15 to 21. Here you discuss three
8 times that the ELR participants have been called upon
9 to curtail their usage; is that correct?

10 A. That's correct.

11 Q. And those three times occurred in 2014,
12 '19, and 2022; is that correct?

13 A. That's correct. And actually I think
14 it's -- it's actually four times because the
15 December 23 and December 24 events in 2022 were
16 inter -- separate interruptions on separate days, so
17 I think this is actually a total of four events.

18 Q. So over -- I think you said 2008 or '9
19 was your recollection of when the ELR started, began;
20 is that correct?

21 A. That's when the -- that's when the -- the
22 population of eligible customers was defined.

23 Q. Okay. And when did the program actually
24 start? Do you recall?

25 A. Interruptible rates have been around

1 since the 1970s to my knowledge.

2 Q. Oh, no. I am talking about the ELR
3 programs specifically.

4 A. I don't recall.

5 Q. Over the course of -- it's been -- it's
6 been at least a decade that the ELR program has been
7 running; is that correct?

8 A. That's correct. It dates back to the
9 first ESP that was approved.

10 Q. And so over that entire time, ELR
11 customers have only had to interrupt their usage four
12 times; is that your understanding?

13 A. That's my understanding.

14 Q. And those four interruptions were all
15 made by -- those calls were all made by PJM; is that
16 right?

17 A. I believe so.

18 Q. So even without the FirstEnergy ELR
19 program being in place, the four interruptions would
20 have occurred; is that correct?

21 A. Not -- no, I don't believe so.

22 Q. Well, if PJM called the interruptions,
23 then they would have had to interrupt, right, in an
24 emergency situation?

25 A. If Rider ELR didn't exist, you wouldn't

1 have a defined population scheduled to interrupt.

2 Q. If the companies that are participating
3 in the ELR program are participating in a PJM
4 program, they would have had to interrupt; is that
5 right?

6 A. That's correct.

7 Q. And is it your understanding that the
8 Company is proposing that the ELR participants also
9 participate in the PJM market through CSP provider?

10 A. That's my understanding.

11 Q. And the way that the program works is the
12 ELR participants receive ELR credits every month
13 regardless of whether they interrupt in that
14 particular month; is that correct?

15 A. I would rephrase that as regardless of
16 whether or not there is an interruptible event during
17 that month; so, yeah, I agree.

18 Q. Thank you. On page 7 of your testimony,
19 you -- you refer to PJM recently explaining an
20 accelerated retirement of thermal generation. Do you
21 see that?

22 A. Yes.

23 Q. PJM procures enough capacity for future
24 years through a series of base and incremental
25 capacity auctions as well as fixed resource

1 requirement plans; is that correct?

2 A. That's correct.

3 Q. And PJM maintains and installs a reserve
4 margin; is that correct?

5 A. Can I have the question repeated?

6 Q. I can restate.

7 EXAMINER ADDISON: Thank you.

8 Q. PJM maintains an installed reserve
9 margin; is that correct?

10 A. PJM defines its target installed reserve
11 margin. It's a minimum objective that it tries to
12 reach in each auction it holds.

13 Q. Do you know what that reserve margin goal
14 is?

15 A. It's typically right -- slightly above
16 15 percent.

17 Q. And often has been offering around the
18 20 percent?

19 A. The actual amount procured is around 20
20 to 21 percent.

21 Q. So this means that PJM procures more
22 capacity resource than it has forecasted that it will
23 need for peak load; is that correct?

24 A. It procures more than the minimum it has
25 defined assuming the prices allow it to do that.

1 Q. Are you aware of any instances when PJM
2 procured less capacity than it needs, less the
3 reserve margin?

4 A. I don't recall any.

5 Q. Do you know how PJM determines capacity
6 price from the auction?

7 A. It's the intersection of supply and
8 demand curves for each zone.

9 Q. You would agree that in any given auction
10 capacity, prices would be lower if more capacity
11 resources cleared and higher if fewer capacity
12 resources cleared, correct?

13 A. That's the general way that auction is
14 structured.

15 Q. Has PJM run auctions -- strike that.
16 It's the actual auction results, not
17 forecasts, that determine the amount of availability
18 capacity in future years; is that correct?

19 A. That's correct.

20 Q. And PJM holds incremental auctions after
21 its base residual auction for capacity; is that
22 correct?

23 A. That historically has been the case but
24 there have been some pauses due to proposed
25 regulatory changes in PJM's auction schedules so I

1 know in some past years incremental auctions have
2 been canceled in some cases. I couldn't tell you the
3 exact ones but.

4 Q. Theoretically the -- if PJM does not
5 procure enough capacity in its base residual auction,
6 then it has the incremental auctions; is that
7 correct?

8 A. No. PJM would procure the minimum
9 capacity requirement in the base residual auction.
10 Incremental auctions are what I would call true-up
11 auctions, so it's the ability to tweak both supply
12 and demand.

13 Q. I know you relied or referenced the PJM
14 report, but I want to know did you conduct any
15 analysis regarding the expected capacity or the next
16 PJM capacity auction?

17 A. Are you talking about quantity to clear?

18 Q. I'm sorry. I didn't hear you.

19 A. Are you talking about the expected
20 quantity to clear?

21 Q. Yes.

22 A. I did not do that analysis.

23 Q. If there was a shortage of capacity in
24 PJM, capacity auction prices would increase; is that
25 correct?

1 A. The -- that's correct.

2 Q. And that would theoretically attract more
3 capacity resources; is that correct?

4 A. Theoretically.

5 Q. Would you agree that attracting capacity
6 through regional competitive auctions with price
7 signals would create a lower cost of capacity as
8 compared to the Commission or another governmental
9 entity choosing specific resources?

10 A. Could you restate the question or repeat
11 the question?

12 Q. Would you agree that attracting capacity
13 through regional competitive auctions with price
14 signals would create a lower cost of capacity as
15 compared to the Commission or another governmental
16 entity choosing specific resources?

17 A. Not necessarily.

18 Q. But it could.

19 A. It could.

20 Q. During ESP IV there has not been a case
21 where FirstEnergy's used ELR differently than the PJM
22 demand response, correct?

23 A. I believe that's correct.

24 MR. ALEXANDER: Can I have that last
25 question read, please? I don't need the answer, just

1 the question.

2 EXAMINER ADDISON: You may.

3 (Record read.)

4 MR. ALEXANDER: Thank you.

5 Q. (By Ms. Bojko) It's true that there are
6 significant renewable energy and natural gas-fired
7 power plants -- or resources, excuse me, in the PJM
8 queue currently; is that correct?

9 A. That's correct.

10 Q. And if the natural gas resources come
11 online, it will replace some of the retirement load
12 that you reference in your testimony; is that
13 correct?

14 A. It could.

15 Q. Isn't it true that customers can lose
16 power from reliability issues related to the
17 distribution and transmission system as well as
18 generation?

19 A. Yes.

20 Q. And the transmission system could have
21 reliability issues if a transmission line is
22 overloaded, correct?

23 A. Correct.

24 Q. And an overload would be a systemwide
25 reliability issue, correct?

1 A. Not necessarily.

2 Q. But it could be, correct?

3 A. I don't believe so.

4 Q. Reducing localized load on an overload
5 transmission line would improve reliability though,
6 wouldn't it?

7 A. It would decrease the reliability
8 problem.

9 Q. Do you know if PJM monitors transmission
10 line loading?

11 A. Yes.

12 Q. And do they?

13 A. Yes.

14 Q. Are you aware of any procedures for PJM
15 to warn a transmission operator that its line is
16 overloading?

17 A. Yes. That happens all the time in real
18 time.

19 Q. And there are options that a transmission
20 line operator can take to reduce load on an
21 overloaded line, correct?

22 A. Yes.

23 Q. Could a transmission line operator
24 coordinate with local distribution utilities to
25 curtail customer load?

1 A. It could.

2 Q. Would ELR customers be an available
3 resource to curtail their load when a local
4 transmission line is overloaded?

5 A. They already are.

6 Q. Do you know what service level most ELR
7 customers are on? Are they on secondary, primary
8 transmission service?

9 A. I do not know.

10 Q. Would you agree with me that most ELR
11 customers are likely on subtransmission or
12 transmission?

13 A. The larger ones would be.

14 Q. If there was a distribution line
15 reliability issue such as an overloaded distribution
16 line, would load curtailment by a transmission
17 service customer improve the distribution system
18 overloading?

19 A. Not necessarily.

20 Q. Would you agree that curtailing
21 transmission service and subtransmission service
22 customer load does not lessen the load on the
23 distribution system?

24 A. It may or may not.

25 MS. BOJKO: If I could have one minute,

1 your Honor.

2 EXAMINER ADDISON: Absolutely.

3 MS. BOJKO: Compare my notes with the
4 struck documents.

5 EXAMINER ADDISON: Let's go off the
6 record for just a moment.

7 (Discussion off the record.)

8 EXAMINER ADDISON: We'll go back on the
9 record.

10 Ms. Bojko.

11 MS. BOJKO: That's all I have, your
12 Honor. Thank you.

13 Thank you, Mr. Murray.

14 EXAMINER ADDISON: Thank you very much.
15 Kroger?

16 MS. CADIEUX: No questions, your Honor.

17 EXAMINER ADDISON: NOAC?

18 MR. HAYS: No questions, your Honor.

19 EXAMINER ADDISON: Calpine?

20 MR. WHITT: No questions.

21 EXAMINER ADDISON: Staff?

22 MS. BOTSCHNER-O'BRIEN: Thank you, your
23 Honor.

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CROSS-EXAMINATION

By Ms. Botschner-O'Brien:

Q. Good afternoon -- good afternoon,
Mr. Murray. I'm Amy Botschner-O'Brien on behalf of
Staff.

A. Good morning.

Q. You are testifying on behalf of Ohio
Energy Group, also known as OEG, today, correct?

A. Correct.

Q. And some of the ELR program participants
are OEG members, correct?

A. Correct.

Q. Would you happen to know how many?

A. Off the top of my head, no.

Q. Okay. Do you have a range? Do you have
any --

A. I don't know.

Q. Just don't know. Okay. On page 6, line
14, of your testimony, you state that ELR
participants curtail their operations "at a cost to
their company's productivity."

A. Correct.

Q. The credits they receive under the ELR
program are expected to be greater than any cost of

1 lost productivity, correct?

2 A. Not necessarily.

3 Q. Okay. And what -- can you explain that a
4 little bit?

5 A. Yeah. The cost, the opportunity cost,
6 the lost cost, lost cost of production is going to
7 vary with customer-by-customer, hour-by-hour,
8 day-by-day, week-by-week. So, for example, if you
9 are a steel mill and you're sold out at capacity and
10 you curtailed, you have got lost sales.

11 Q. But would --

12 A. I haven't finished my answer.

13 Q. I'm sorry. Go ahead.

14 A. Conversely, if you are a steel mill but
15 you are only operating at 70 percent production
16 capability, if the cost of curtailment is much less
17 because you are not going to lose a sale, you are
18 just going to shift production to another hour in
19 another day.

20 Q. But I guess -- I'm sorry. I don't mean
21 to interrupt you.

22 A. So again, you know, you can't pick a
23 single number and say that's going to be the cost
24 of -- to a company's productivity. You would have to
25 look on that on a case-by-case basis, hour-by-hour,

1 and every interruptible.

2 Q. Well, I understand, but I guess what I am
3 getting at would it be economically rational for a
4 business to incur costs to curtail if it expected
5 those costs to be lower than credits received under
6 the program?

7 A. Most likely, no, but it could be in
8 certain circumstances, for example, if you were
9 willing to undertake a short-term loss in order to
10 remain eligible for long-term participation.

11 Q. Okay. Moving on to page 19 of your
12 testimony, line 3, you state that "ELR customers
13 should have the option (but not the requirement) to
14 participate in PJM demand response programs and
15 retain any revenues and incur the associated risk."
16 Do you see that?

17 A. I may have the wrong page here. Would
18 you direct me to the right page number and line?

19 Q. Sure. Page 19.

20 A. Okay.

21 Q. Line 3.

22 A. Okay. I got it.

23 Q. Okay. I'll repeat the question. You
24 state that "ELR customers should have the option (but
25 not the requirement) to participate in PJM demand

1 response programs and retain any revenues and incur
2 the associated risk." Do you see that?

3 A. Yes.

4 Q. ELR participants would not be able to
5 participate in PJM's capacity auctions if the
6 Companies continue their current practice of bidding
7 interruptible load into PJM, correct?

8 A. Could you repeat?

9 Q. Sure. ELR participants would not be able
10 to participate in PJM's capacity auctions if the
11 Companies continue their current practice of bidding
12 interruptible load into PJM?

13 A. That's correct.

14 Q. And so you recommend just going down that
15 page on page -- line 6 to 12, that the Companies stop
16 doing that, correct?

17 A. That's correct.

18 Q. And if the Companies stop bidding into
19 PJM, then customers would no longer get the benefit
20 of the 80 percent of revenues that are used to offset
21 rider costs, correct?

22 A. That's correct.

23 Q. According to you, the Companies
24 continuing to bid into PJM "is risky and not
25 efficient" because of the potential for capacity

1 performance penalties which can be significant; is
2 that correct?

3 A. That's correct.

4 Q. You're not aware of FirstEnergy paying
5 any such penalties during the term of ESP IV,
6 correct?

7 A. The Company would have to answer that.
8 I'm -- don't have knowledge.

9 Q. You propose that ELR participants be
10 allowed to participate in demand response programs
11 and keep any revenue; is that correct?

12 A. That's correct.

13 Q. And then you state on line 5 of page 19
14 that "This would partially compensate for the
15 reduction in the interruptible credits," correct?

16 A. Correct.

17 Q. You use the word "partially;" but, in
18 fact, it's possible that the compensation received
19 from participating in PJM would be greater than the
20 reduction in credit -- in ELR credits, correct?

21 A. It's possible.

22 Q. Okay. Let's look at the aggregate impact
23 of your recommendations in the first year of ESP V.
24 Under your proposal the credits for ELR participants
25 in year one of ESP V would be \$10 kilowatt-hour,

1 correct?

2 A. It's \$10 per kW month.

3 Q. Oh, okay. I'm sorry, kW month, correct?
4 That is correct.

5 A. \$10 per kW month.

6 Q. Okay. That \$10 per kW month is the same
7 as the current credit under ESP IV, correct?

8 A. That's correct.

9 Q. And under your proposal, FirstEnergy
10 would no longer bid load into PJM, so customers would
11 no longer receive a credit under the rider for PJM
12 revenues, correct?

13 A. That's correct.

14 Q. So all else equal, charges to
15 nonparticipating customers would actually be higher
16 in year one of ESP V than they currently are under
17 ESP IV, correct?

18 A. They would be slightly higher. I believe
19 historically the amount of revenues that FirstEnergy
20 gets from bidding into PJM are pretty minimal.

21 Q. So your answer is they would be slightly
22 higher.

23 A. Yes.

24 MS. BOTSCHNER-O'BRIEN: Okay. Thank you.

25 That's all I have for this witness.

1 EXAMINER ADDISON: Thank you very much.

2 Mr. Kurtz, any redirect?

3 MR. KURTZ: No, your Honor, no redirect.

4 EXAMINER ADDISON: We have no additional
5 questions for you at this time, Mr. Murray. Thank
6 you very much for your testimony.

7 Mr. Kurtz.

8 MR. KURTZ: Oh, your Honor, I move the
9 admission of OEG Exhibit 3, subject to the Bench's
10 prior rulings on the motions to strike.

11 EXAMINER ADDISON: Any objection to the
12 admission of OEG Exhibit 3, subject to the Bench's
13 rulings on the motion to strike?

14 MR. ALEXANDER: No objection.

15 EXAMINER ADDISON: Hearing none, it will
16 be admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER ADDISON: Thank you.

19 Let's go off the record for a moment.

20 (Discussion off the record.)

21 EXAMINER ADDISON: Let's go back on the
22 record.

23 That concludes the witnesses we will be
24 taking today. We will reconvene tomorrow at 10:30.
25 Anything else before we adjourn?

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All right. Thank you all.

(Thereupon, at 12:40 p.m., the hearing
was adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Monday, November 27,
2023, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7551)

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in

Case No(s). 23-0301-EL-SSO

Summary: Transcript of Ohio Edison Company, CEI and The Toledo Edison Company hearing held on 11/27/23 - Volume VIII electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs..